

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1467 of 1990

For Approval and Signature:

Hon'ble MR.JUSTICE A.M.KAPADIA

=====

1. Whether Reporters of Local Papers may be allowed : NO
to see the judgements?

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy : NO
of the judgement?

4. Whether this case involves a substantial question : NO
of law as to the interpretation of the Constitution
of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge? : NO

BHIKHALAL RAMJIBHAI & COMPANY

Versus

ADDL. COLLECTOR

Appearance:

MR JR NANAVATI for Petitioner
MR MA BUKHARI AGP instructed by M/s. PATEL
ADVOCATES, SOLICITORS for respondents.

CORAM : MR.JUSTICE A.M.KAPADIA

Date of decision: 21/07/2000

ORAL JUDGEMENT

1. By means of this petition filed under Article 226
of the Constitution of India, the petitioner challenges
the order dated June 30, 1989 passed under Section 6 (1)
of the Urban Land (Ceiling & Regulation) Act, 1976

(hereinafter referred to as 'the Act' for short) in ULC Scheme- 936 by the Additional Collector, Urban Land Ceiling, Rajkot which was confirmed vide order dated December 4, 1989 recorded in Appeal No. Rajkot-38/89 by the Urban Lands Tribunal, Ahmedabad, in exercise of powers conferred under Section 33 of the Act.

2. The petitioner who was the owner of land bearing S.No.440/A/1 which under the Town Plan Act was given final plot No. 345 admeasuring 1 Acre 1 1/2 gunthas (approximately 3125 sq.mt.) had applied for exemption under Section 20 of the Act which was granted by the Government. However, the said exemption was cancelled as the petitioner had allegedly committed breach of the conditions imposed while granting exemption. Thereafter the petitioner had filed application under Section 21 of the Act for permission for constructing a housing scheme for the weaker section of the society which was rejected by the competent authority and it was confirmed in appeal by the Tribunal.

3. Mr. Nanavati, learned advocate for the petitioner, states that by virtue of the Urban Land (Ceiling & Regulation) Repeal Act, 1999 (Act No.15 of 1999) ('the Repeal Act' for short hereinafter) the Act has been repealed. He further submits that the petitioner is in possession of the land in question from the very beginning and in view of the enactment of the Repeal Act, all the proceedings under the Act are now abated and, therefore, no order is required to be passed in this petition.

4. Mr. Bukhari, learned A.G.P. states that since the Government has declared the land in question as surplus land under Section 10 (3) of the Act, the land vests in the Government.

5. Mr. Nanavati states that it is true that by virtue of the order passed under Section 10 (3) of the Act the land in question vests in the Government but since the possession of the land has not been taken over by the Government after following the provisions of Section 10 (5) of the Act, the petitioner is in possession of the land in question.

6. Having heard the learned advocates for the parties and on having perusal of the averments made in the petition and after going through the impugned orders, there is no manner of doubt that the Government by virtue of the order passed under Section 10 (3) of the Act has declared the land in question as surplus land and,

therefore, obviously it vests in the Government. However, on perusal of the record, nowhere it could be seen that the Government has taken the possession of the land in question after serving notice as required under Section 10 (5) of the Act and, therefore, obviously the possession of the land in question is not taken by the Government and the possession is with the petitioner. Therefore, there is much substance and force in the submission of Mr. Nanavati that possession of the land in question has never been taken by the Government after following the provisions of Section 10 (5) of the Act.

7. In view of the latest development that the Act has been repealed by the Repeal Act and that the possession of the land in question has not been taken by the Government, the entire proceeding stands abated and consequently the petition also stands abated.

8. In the result, the petition is abated. Rule is discharged with no order as to costs. Interim relief granted earlier stands vacated. It is, however, clarified that liberty is reserved in favour of either party to approach this Court by reviving the petition in case of difficulty.

21.7.2000. (A.M. Kapadia, J.)

(karan)